

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BILLY J. RAYBURN,

Plaintiff,

v.

Civil Action No. 2:07cv42

**HARLEY LAPPIN, K.M. WHITE,
WARDEN M. MARTINEZ,
H. BOYLES and P.A. AZUMAH,**

Defendants.

ORDER

It will be recalled that on January 2, 2008, Magistrate Judge Kaul filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On January 17, 2008, Plaintiff filed a pleading entitled Notice of Appeal, which was docketed as objections to the Report and Recommendation. However, said pleading simply stated that Plaintiff would like to file an appeal on the Opinion/Report and Recommendation without setting forth any specific arguments or objections. While Plaintiff has not specifically objected to any aspect of the Magistrate Judge's Report and Recommendation, the Court will, none-the-less, review the Magistrate's findings de novo.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, filed pursuant to 42 U.S.C. §1983, wherein Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs, were thoroughly considered by Magistrate Judge Kaul in his Report and Recommendation. Moreover, the Court, upon an independent de novo

consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. More particularly, the Court agrees and finds that Plaintiff has failed to exhaust his administrative remedies. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Complaint shall be, and the same hereby is, **DISMISSED without prejudice** for failure to exhaust and that the above-styled civil action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

ENTER: April 13, 2009

/s/ Robert E. Maxwell
United States District Judge